

701 KAR 5:090. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS 156.070, 161.790(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.790(4) requires the commissioner of education to appoint an impartial three (3) member tribunal to conduct an administrative hearing and make the final determination on charges concerning a local school district's proposal to discipline or place on involuntary leave a teacher if the teacher gives timely notice of his intent to answer the charges. This administrative regulation establishes administrative and hearing procedures with respect to the tribunal process and identifies the required training for tribunal members designated to serve as tribunal members on an ongoing basis.

Section 1. A local school district superintendent proposing to discipline (except for a private reprimand) or place on involuntary leave a teacher shall immediately, after notice to the employee, transmit a copy of the notice of the action to the commissioner of education, along with advice as to the date of the receipt of the notice by the employee.

Section 2. Continuances. (1)(a) If, after a requested hearing has been scheduled by the commissioner of education or his designee, a continuance is requested by the teacher, the teacher shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance. A continuance initiated by the teacher shall not be granted without the appropriate waiver.

(b) If the continuance request was initiated by the school district, a waiver shall not be required.

(2) A continuance requested by the teacher may be granted for good cause shown, including pending criminal charges making it inadvisable for the employee to testify at an administrative hearing or late entry of an attorney into the case on behalf of the employee.

(3) A continuance requested by the school district, and not agreed to by the employee, may be granted upon documentation of an emergency or other circumstance making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) A request for continuance made prior to the three (3) member tribunal convening shall be submitted in writing to the hearing officer.

Section 3. (1) To be a member of the pool of potential tribunal members who is designated to serve as a tribunal member on an ongoing basis, a person shall receive training on the following topics:

- (a) The hearing process;
- (b) The role of the tribunal;
- (c) The role of the hearing officer;
- (d) How to determine facts;
- (e) Fundamental fairness;
- (f) The law on teacher disciplinary actions (KRS 161.790); and
- (g) The deliberative process.

(2) For attending training to become a member of the pool of potential tribunal members, a person shall receive a per diem of \$100 and reimbursement of travel expenses from the Department of Education.

Section 4. (1) The local school district shall pay all travel expenses of the hearing officer.

(2) No later than the convening of the hearing, the local school district shall advise the tribunal members how to claim their per diem and travel expenses.

Section 5. A hearing before the tribunal shall be conducted in accordance with KRS Chapter 13B.

Section 6. (1) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the commissioner of education and provided by the school district with a written transcript of all prior proceedings at the hearing unless waived under subsection (2) of this section.

(2) A hearing may be concluded and a decision rendered by a two (2) member tribunal upon express agreement of both parties. (18 Ky.R. 217; eff. 9-6-91; Am. 23 Ky.R. 1425; 2466; eff. 12-5-96; 29 Ky.R. 805; 1271; eff. 11-12-2002.)